IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE CRIMINAL JURISDICTION
CRIMINAL APPEAL NO.416 OF 1990

The State of Maharashtra .. **Appellant (Orig.Complt.)**

Versus

Smt. Shanta alias Akka
Janardhan Pol .. **Respondent (Orig.Accused)**

Dr. F.R. Shaikh APP for the State
Mr. Niranjan Mundargi Adv. for the Respondent

CORAM : D.G. DESHPANDE, & S.R. SATHE, JJ.
DATED : 06/03/2007

ORAL JUDGEMENT (PER D.G. DESHPANDE,J.) :-

1. Heard learned APP Dr. F.R. Shaikh for the State and the learned Advocate Mr. Niranjan Mundargi for the respondent-accused. State has filed this appeal challenging the acquittal of the accused for the offences under sections 22 and 25 of the Narcotic Drugs and Psychotropic Substances Act, 1985 for conscious possession of brown-sugar vide judgement dated 15/03/1990 delivered by the Sessions Judge, Kolhapur.

2. It was the case of the prosecution that Custom Inspector Indulkar received information on 13/02/1986

that accused was dealing with brown-sugar. He reduced that information into writing and handed over that written information to Superintendent Yadav and obtained search warrant from him. Thereafter, search of house of the accused was taken. The accused was found their alongwith 95 packets of the brown-sugar weighing 20 Grams, another plastic bag containing about 10 Grams of lose brown-sugar and one yellow plastic Can containing 10 Grams brown-sugar. All this muddemal was attached before pancha. Accused was arrested and prosecuted. The C.A. Report was in favour of the Prosecution.

3. However during the trial, one pancha PW-1 Balasaheb Salokhe turned hostile. The other pancha Pol was not available to the Prosecution. Apart from that, the prosecution failed to produce the search warrant because according to them, search warrant was misplaced as the Flying Squad was abolished. The search warrant was not on record. Secondly, though the Trial Court gave finding that brown-sugar was found from the house of the accused, she came to be acquitted because prosecution could not prove conscious possession of the accused. The search was taken in House No.2858 of 'B' Ward, Jawahar Nagar, Kolhapur. Prosecution has no

evidence to show that the house belongs to the accused. No document was collected nor any statement recorded. Accused on the contrary in her defence produced a extract of House No.2858 'B' Ward, Jawahar Nagar, Kolhapur which showed that the house belongs to one Sharada Pol. Therefore, the Trial Court find that the prosecution has failed to prove the conscious possession of the accused and any connection of that house with the accused. Therefore, the view taken by the Trial Court is reasonable and proper. No interference is required.

Appeal is dismissed.

Accused is on bail.

Her bail bond stands cancelled.

(D.G. DESHPANDE,J.)

(S.R. SATHE,J.)